

110TH CONGRESS
2D SESSION

S. 2884

To amend the Internal Revenue Code of 1986 to provide incentives to improve America's research competitiveness, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 17, 2008

Ms. COLLINS (for herself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide incentives to improve America's research competitiveness, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Research and Develop-
5 ment Tax Credit Improvement Act of 2008”.

6 **SEC. 2. SIMPLIFICATION OF RESEARCH AND DEVELOP-**
7 **MENT CREDIT.**

8 (a) TRANSITION TO FULLY IMPLEMENTED SIM-
9 PLIFIED CREDIT FOR QUALIFIED RESEARCH EX-
10 PANSES.—

1 (1) PHASE-OUT OF TRADITIONAL CREDIT.—

2 Section 41(a) of the Internal Revenue Code of 1986
3 is amended—

4 (A) by striking “20 percent” each place it
5 appears and inserting “the applicable percent-
6 age”, and

7 (B) by adding at the end the following new
8 flush sentence:

9 “For purposes of this subsection, the term ‘applicable per-
10 centage’ means 20 percent with respect to taxable years
11 beginning in 2008 and 2009.”.

12 (2) PHASE-IN OF SIMPLIFIED CREDIT.—Section
13 41(c)(5)(A) of such Code is amended—

14 (A) by striking “12 percent” and inserting
15 “the applicable percentage”, and

16 (B) by adding at the end the following new
17 sentence: “For purposes of the preceding sen-
18 tence, the term ‘applicable percentage’ means
19 16 percent with respect to taxable years begin-
20 ning in 2008 and 18 percent with respect to
21 taxable years beginning in 2009.”.

22 (3) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to taxable years begin-
24 ning after December 31, 2007.

1 (b) FULLY IMPLEMENTED SIMPLIFIED CREDIT FOR
 2 QUALIFIED RESEARCH EXPENSES.—

3 (1) IN GENERAL.—Subsection (a) of section 41
 4 of the Internal Revenue Code of 1986 (relating to
 5 credit for increasing research activities) is amended
 6 to read as follows:

7 “(a) DETERMINATION OF CREDIT.—

8 “(1) IN GENERAL.—For purposes of section 38,
 9 the research credit determined under this section for
 10 the taxable year shall be equal to 20 percent of so
 11 much of the qualified research expenses for such
 12 taxable year as exceeds 50 percent of the average
 13 qualified research expenses for the 3 taxable years
 14 preceding the taxable year for which the credit is
 15 being determined.

16 “(2) SPECIAL RULE IN CASE OF NO QUALIFIED
 17 RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAX-
 18 ABLE YEARS.—

19 “(A) TAXPAYERS TO WHICH PARAGRAPH
 20 APPLIES.—The credit under this section shall
 21 be determined under this paragraph if the tax-
 22 payer has no qualified research expenses in at
 23 least 1 of the 3 taxable years preceding the tax-
 24 able year for which the credit is being deter-
 25 mined.

1 “(B) CREDIT RATE.—The credit deter-
 2 mined under this paragraph shall be equal to
 3 10 percent of the qualified research expenses
 4 for the taxable year.”.

5 (2) CONFORMING AMENDMENT.—Section 41 of
 6 such Code is amended by striking subsection (c).

7 (c) UNIFORM REIMBURSEMENT RATES FOR ALL
 8 CONTRACT RESEARCH EXPENSES OTHER THAN
 9 AMOUNTS PAID FOR BASIC RESEARCH.—

10 (1) IN GENERAL.—Section 41(b)(3) of the In-
 11 ternal Revenue Code of 1986 (relating to contract
 12 research expenses) is amended—

13 (A) by striking “65 percent” and inserting
 14 “80 percent”, and

15 (B) by striking subparagraphs (C) and
 16 (D).

17 (2) BASIC RESEARCH PAYMENTS.—Section
 18 41(b) of such Code is amended by redesignating
 19 paragraph (4) as paragraph (5) and by inserting
 20 after paragraph (3) the following new paragraph:

21 “(4) BASIC RESEARCH PAYMENTS.—

22 “(A) IN GENERAL.—In the case of basic
 23 research payments by the taxpayer, paragraph
 24 (3)(A) shall be applied by substituting ‘100 per-
 25 cent’ for ‘80 percent’.

“(B) BASIC RESEARCH PAYMENTS DEFINED.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘basic research payment’ means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if—

“(I) such payment is pursuant to a written agreement between such corporation and such qualified organization, and

“(II) such basic research is to be performed by such qualified organization.

“(ii) EXCEPTION TO REQUIREMENT THAT RESEARCH BE PERFORMED BY THE ORGANIZATION.—In the case of a qualified organization described in clause (iii) or (iv) of subparagraph (C), subclause (II) of clause (i) shall not apply.

“(C) QUALIFIED ORGANIZATION.—For purposes of this paragraph, the term ‘qualified organization’ means any of the following organizations:

1 “(i) EDUCATIONAL INSTITUTIONS.—

2 Any educational organization which—

3 “(I) is an institution of higher
4 education (within the meaning of sec-
5 tion 3304(f)), and

6 “(II) is described in section
7 170(b)(1)(A)(ii).

8 “(ii) CERTAIN SCIENTIFIC RESEARCH
9 ORGANIZATIONS.—Any organization not
10 described in clause (i) which—

11 “(I) is described in section
12 501(c)(3) and is exempt from tax
13 under section 501(a),

14 “(II) is organized and operated
15 primarily to conduct scientific re-
16 search, and

17 “(III) is not a private founda-
18 tion.

19 “(iii) SCIENTIFIC TAX-EXEMPT ORGA-
20 NIZATIONS.—Any organization which—

21 “(I) is described in section
22 501(c)(3) (other than a private foun-
23 dation) or section 501(c)(6),

24 “(II) is exempt from tax under
25 section 501(a),

1 “(III) is organized and operated
 2 primarily to promote scientific re-
 3 search by qualified organizations de-
 4 scribed in clause (i) pursuant to writ-
 5 ten research agreements, and

6 “(IV) currently expends substan-
 7 tially all of its funds or substantially
 8 all of the basic research payments re-
 9 ceived by it for grants to, or contracts
 10 for basic research with, an organiza-
 11 tion described in clause (i).

12 “(iv) CERTAIN GRANT ORGANIZA-
 13 TIONS.—Any organization not described in
 14 clause (ii) or (iii) which—

15 “(I) is described in section
 16 501(c)(3) and is exempt from tax
 17 under section 501(a) (other than a
 18 private foundation),

19 “(II) is established and main-
 20 tained by an organization established
 21 before July 10, 1981, which meets the
 22 requirements of subclause (I),

23 “(III) is organized and operated
 24 exclusively for the purpose of making
 25 grants to organizations described in

1 clause (i) pursuant to written research
 2 agreements for purposes of basic re-
 3 search, and

4 “(IV) makes an election, rev-
 5 ocable only with the consent of the
 6 Secretary, to be treated as a private
 7 foundation for purposes of this title
 8 (other than section 4940, relating to
 9 excise tax based on investment in-
 10 come).

11 “(D) DEFINITIONS AND SPECIAL RULES.—

12 For purposes of this paragraph—

13 “(i) BASIC RESEARCH.—The term
 14 ‘basic research’ means any original inves-
 15 tigation for the advancement of scientific
 16 knowledge not having a specific commercial
 17 objective, except that such term shall not
 18 include—

19 “(I) basic research conducted
 20 outside of the United States, and

21 “(II) basic research in the social
 22 sciences, arts, or humanities.

23 “(ii) TRADE OR BUSINESS QUALIFICA-
 24 TION.—For purposes of applying para-
 25 graph (1) to this paragraph, any basic re-

1 search payments shall be treated as an
 2 amount paid in carrying on a trade or
 3 business of the taxpayer in the taxable
 4 year in which it is paid (without regard to
 5 the provisions of paragraph (3)(B)).

6 “(iii) CERTAIN CORPORATIONS NOT
 7 ELIGIBLE.—The term ‘corporation’ shall
 8 not include—

9 “(I) an S corporation,

10 “(II) a personal holding company
 11 (as defined in section 542), or

12 “(III) a service organization (as
 13 defined in section 414(m)(3)).”.

14 (3) CONFORMING AMENDMENTS.—

15 (A) Section 41 of such Code is amended by
 16 striking subsection (e).

17 (B) Section 41(f) of such Code is amended
 18 by striking paragraph (6).

19 (d) 5-YEAR EXTENSION OF CREDIT.—

20 (1) IN GENERAL.—Section 41(h)(1)(B) of the
 21 Internal Revenue Code of 1986 is amended by strik-
 22 ing “December 31, 2007” and inserting “December
 23 31, 2012”.

24 (2) CONFORMING AMENDMENT.—Section
 25 45C(b)(1)(D) of such Code is amended by striking

1 “December 31, 2007” and inserting “December 31,
2 2012”.

3 (3) EFFECTIVE DATE.—The amendments made
4 by this subsection shall apply to taxable years begin-
5 ning after December 31, 2007.

6 (e) CONFORMING AMENDMENTS.—

7 (1) Section 41 of the Internal Revenue Code of
8 1986 is amended by redesignating subsections (d),
9 (f), and (g) as subsections (c), (d), and (e), respec-
10 tively.

11 (2) Paragraphs (2)(A) and (5) (as redesignated
12 by subsection (b)(2)) of section 41(b) of such Code
13 are each amended by striking “subsection (f)(1)”
14 and inserting “subsection (d)(1)”.

15 (3) Sections 45C(d)(3), 45G(e)(2), and
16 936(h)(5)(C)(i)(IV)(c) of such Code are each
17 amended by striking “section 41(f)” and inserting
18 “section 41(d)”.

19 (4) Section 54(l)(3)(A) of such Code is amend-
20 ed by striking “section 41(g)” and inserting “section
21 41(e)”.

22 (5) Section 170(e)(4)(B)(i) of such Code is
23 amended by striking “subparagraph (A) or subpara-
24 graph (B) of section 41(e)(6)” and inserting “clause
25 (i) or (ii) of section 41(b)(4)(C)”.

1 (6) Sections 197(f)(1)(C), 197(f)(9)(C)(i)(II),
2 and 280C(b)(3) of such Code are each amended by
3 striking “section 41(f)(1)” and inserting “section
4 41(d)(1)”.

5 (7) Section 280C(b)(3) of such Code is amend-
6 ed by striking “section 41(f)(5)” and inserting “sec-
7 tion 41(d)(5)”.

8 (8) Section 280C(b)(3) of such Code is amend-
9 ed by striking “section 41(f)(1)(B)” and inserting
10 “section 41(d)(1)(B)”.

11 (9) Section 280C(c)(1) of such Code is amend-
12 ed by striking “section 41(e)(2)” and inserting “sec-
13 tion 41(b)(4)(B)”.

14 (10) Section 280C(c)(2)(A) of such Code is
15 amended by striking “section 41(a)(1)” and insert-
16 ing “section 41(a)”.

17 (11) Sections 936(j)(5)(D) and 965(c)(2)(C)(i)
18 of such Code are each amended by striking “section
19 41(f)(3)” and inserting “section 41(d)(3)”.

20 (f) EFFECTIVE DATE.—Except as otherwise provided
21 in this section, the amendments made by this section shall
22 apply to taxable years beginning after December 31, 2009.

23 (g) STUDY OF COMPLIANCE WITH SUBSTANTIATION
24 REQUIREMENTS.—The Secretary of the Treasury or his
25 delegate shall, not later than 1 year after the date of the

1 enactment of this Act, conduct a study of taxpayer compli-
2 ance with the substantiation requirements for claiming the
3 credit allowed under section 41 of the Internal Revenue
4 Code of 1986, including a study of—

5 (1) whether taxpayers maintain adequate record
6 keeping to determine eligibility for, and correct
7 amount of, the credit,

8 (2) the impact of failure to comply with such
9 requirements on the oversight and enforcement re-
10 sponsibilities of the Internal Revenue Service, and

11 (3) the burdens imposed on other taxpayers by
12 failure to comply with such requirements.

13 The Secretary shall report the results of such study to
14 the Committee on Ways and Means of the House of Rep-
15 resentatives and the Committee on Finance of the Senate,
16 including any recommendations for administrative or leg-
17 islative actions which could be taken to improve compli-
18 ance with such requirements.

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